

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRS GROUP, INC.,

Plaintiff,

v.

CIVIL—ENVIRONMENTAL—  
SURVEY GROUP, INC., et al.

Defendants.

CASE NO. 2:15-CV-01363 MJP

ORDER ON PLAINTIFF’S MOTION  
FOR PARTIAL JUDGMENT ON  
THE PLEADINGS

THIS MATTER comes before the Court on Plaintiff’s Motion for Partial Judgment on the Pleadings. (Dkt. No. 22.) Having reviewed the Motion, Defendants’ response, (Dkt. No. 23), Plaintiff’s reply, (Dkt. No. 24), and the related record, the Court hereby GRANTS the Motion.

**Background**

The following facts are alleged in Plaintiff TRS Group, Inc.’s (“TRS”) Complaint. (Dkt. No. 1.) TRS provides thermal remediation services for contaminated soil and groundwater using various technologies. (Id. at 2.) Defendant Civil—Environmental—Survey Group, Inc. (“CES”)

1 is an engineering firm that provides a range of services, including remediation for contaminated  
2 soil and groundwater. (Id.) Defendant Keegan Environmental and Engineering Solutions a/k/a  
3 Keegan Engineering (“KEES”) is certified through the California Department of General  
4 Services as a Service Disabled Veteran Enterprise (“SDVBE”) and pursues business  
5 opportunities for CES where an SDVBE certification is valuable. (Id. at 2–3.)

6 Defendant James P. Keegan is the President, Founder, and registered agent of CES,  
7 corresponds interchangeably from emails using CES and KEES domain names, and lists the  
8 same phone number for both CES and KEES. (Id. at 3.)

9 In April 2011, TRS entered into a Teaming Agreement (“Agreement”) with CES. (Id. at  
10 4.) Among other things, the Agreement called for CES to “perform marketing and sales services  
11 for TRS” including “developing proposal opportunities for projects” in exchange for a  
12 commission. (Id.)

13 The Agreement also contained non-compete and confidentiality clauses. (Id. at 4–5.)  
14 Pursuant to these clauses, CES agreed not to: compete with TRS for at least one year after  
15 termination of the Agreement, interfere with TRS’s business relationships for two years after the  
16 Agreement terminated, or ever “use or disclose to any person for any purpose, other than for the  
17 benefit of [CES and TRS], any Confidential Information,” including “all nonpublic facts, plans,  
18 designs, processes, marketing techniques, trade secrets, discoveries, technology, inventions,  
19 research, development, pricing policies or price lists.” (Id.)

20 CES also agreed that its employees and agents providing support to TRS’s ERH  
21 marketing or project efforts would be required to sign an employee non-disclosure agreement  
22 that forbids using, disclosing, or divulging “any trade secrets, confidential information, or any  
23 other proprietary data” of CES or its clients, such as TRS. (Id. at 5–6.)

1 In early 2015, Tetra Tech EC, Inc. (“Tetra Tech”) began soliciting proposals for the ERH  
2 portion of a remediation project at the NEX Gas Station in the Jackson Park Housing Complex in  
3 Bremerton, Washington. (Id. at 6.) The Naval Facilities Engineering Command Northwest  
4 (“NAVFAC NW”) selected Tetra Tech to implement the remedial action at this site. (Id.)

5 In April 2015, consistent with the Agreement, Mr. Keegan contacted TRS about the Tetra  
6 Tech opportunity and the potential to work together with TRS to submit a proposal. (Id.) TRS  
7 and Defendants then collaborated on a proposal for the Tetra Tech opportunity and discussed  
8 confidential strategy, pricing, engineering design, and other confidential aspects of how they  
9 would jointly propose to price and accomplish the work. (Id.) TRS relied on Mr. Keegan to  
10 obtain specific information required by Tetra Tech for the proposal, which was due May 20,  
11 2015. (Id. at 6–7.) As late as May 14, 2015, Mr. Keegan communicated with TRS about  
12 confidential pricing, cost splits, and division of labor in connection with the proposal. (Id. at 7.)

13 However, while TRS was sharing the above confidential information with Defendants,  
14 Mr. Keegan and KEES were also working with a direct TRS competitor, Global Remediation  
15 Solutions (“GRS”), on a separate proposal for the Tetra Tech opportunity. (Id.) Just before the  
16 Tetra Tech deadline (and using confidences TRS shared with Defendants), Keegan/KEES and  
17 GRS submitted a joint proposal to Tetra Tech. (Id.) TRS submitted proposals to Tetra Tech  
18 independently, without Defendants. (Id.)

19 In the proposal that Mr. Keegan/KEES and GRS submitted to Tetra Tech, they included a  
20 statement of qualifications listing their prior ERH experience. (Id.) However, of the twenty-two  
21 prior ERH projects that they claimed to have completed in their statement of qualifications,  
22 twenty were projects that TRS had actually completed. (Id.) This proposal, which benefited  
23 from TRS’s confidential information and Mr. Keegan’s years of working with TRS, violated the  
24

1 Agreement. (Id.) Ultimately, Tetra Tech selected Mr. Keegan/KEES's and GRS's proposal over  
 2 TRS's proposals. (Id.)

3 Defendants were aware that submission of the joint bid with GRS would violate the  
 4 Agreement, and, therefore, attempted to terminate the Agreement for cause just two days before  
 5 submission of their bid with GRS on the grounds that TRS breached the Agreement three years  
 6 prior. (Id.)

7 TRS commenced this suit against Defendants in August 2015, asserting claims arising  
 8 out of the above events. (Id. at 8–13.) In response to TRS's complaint, Defendants filed a First  
 9 Amended Answer and Counterclaim, (Dkt. No. 11), in which Mr. Keegan and KEES assert, inter  
 10 alia, a counterclaim against TRS for unfair and deceptive trade practices in violation of the  
 11 Washington Consumer Protection Act ("CPA"). TRS now moves for partial judgment on the  
 12 pleadings on Mr. Keegan's and KEES's CPA counterclaim. (Dkt. No. 22.) Defendants oppose  
 13 the Motion. (Dkt. No. 23.)

## 14 Discussion

### 15 **I. Legal Standard**

#### 16 **A. Federal Rule of Civil Procedure 12(c)**

17 A party may move for judgment on the pleadings under Rule 12(c) of the Federal Rules  
 18 of Civil Procedure after the pleadings are closed. Fed. R. Civ. P. 12(c). The standard applied on  
 19 a Rule 12(c) motion is similar to that applied on a Rule 12(b)(6) motion. See Cafasso, U.S. ex  
 20 rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). Dismissal under  
 21 Rule 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of  
 22 sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901  
 23 F.2d 696, 699 (9th Cir. 1990).

1 A party's complaint must allege facts to state a claim for relief that is plausible on its  
 2 face. See Aschroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when  
 3 the party seeking relief "pleads factual content that allows the court to draw the reasonable  
 4 inference that the defendant is liable for the misconduct alleged." Id. Although the court must  
 5 accept as true the complaint's well pled facts, conclusory allegations of law and unwarranted  
 6 inferences will not defeat a Rule 12(c) motion. Vazquez v. L.A. Cty., 487 F.3d 1246, 1249 (9th  
 7 Cir. 2007); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).

## 8 **II. TRS's Motion for Partial Judgment on the Pleadings**

9 To prevail on a CPA claim, a party must plead and prove: (1) an unfair or deceptive act  
 10 or practice; (2) occurring in trade or commerce; (3) that has a public interest impact; (4) that  
 11 caused injury; (5) to plaintiff in her business or property. Hangman Ridge Training Stables, Inc.  
 12 v. Safeco Title Ins. Co., 105 Wn.2d 778, 780 (1986). "When the transaction is a private dispute  
 13 . . . and not a consumer transaction, it is more difficult to show public interest in the subject  
 14 matter. There must be a likelihood additional persons have been or will be injured in the same  
 15 fashion." Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc., 86 Wash. App. 732, 744–45  
 16 (1997).

17 Here, Mr. Keegan and KEES allege TRS committed unfair and deceptive acts in violation  
 18 of the CPA by filing this lawsuit against them and by notifying Tetra Tech of the basis for the  
 19 lawsuit. (Dkt. No. 11 at 18–20.)

20 TRS argues Mr. Keegan and KEES have not adequately pled, and cannot plead, that  
 21 actions by TRS impact the public interest. (Dkt. No. 22.) Specifically, TRS contends that Mr.  
 22 Keegan and KEES "have not alleged, even hypothetically, that any other parties have been or are  
 23 likely to be injured by TRS in the same way that they were injured." (Id. at 9.)

1 Defendants argue that they are not required to plead repetition in light of certain 2009  
2 amendments to the CPA. (Dkt. No. 23.) Defendants also argue they have satisfied the public  
3 interest impact element of their CPA claim by alleging TRS's actions interfered with  
4 government-funded remediation of environment contamination, wasted public tax money, and  
5 falsely disparaged Mr. Keegan's and KEES's reputations. (Id.)

6 The Court concludes Defendants have not adequately alleged the public interest impact  
7 required for a CPA claim. This is a private dispute between two competitors arising out of the  
8 alleged breach of an agreement containing non-compete provisions. (Dkt. Nos. 1, 11.) The 2009  
9 amendments to the CPA did not change the requirement that a party asserting a CPA claim  
10 arising out of a private dispute must plead and prove that the conduct at issue has been or is  
11 likely to be repeated upon other members of the public. See e.g. Evergreen Moneysource  
12 Mortgage Co. v. Shannon, 167 Wash. App. 242, 260–261 (2012). Defendants have not pled that  
13 any other parties have been or are likely to be injured by TRS in the same way that Defendants  
14 were injured. (Dkt. No. 11.) Defendants cannot satisfy this requirement by alleging third parties  
15 (i.e. the public or the government) were somehow harmed by TRS's conduct, or by alleging  
16 harm to their own reputations.

17 Defendants ask the Court to grant them leave to amend if the Court finds Defendants  
18 were required to plead repetition. (Dkt. No. 23 at 5.) However, Defendants have already  
19 amended their answer once, and the Court finds further amendment would be futile.

20 Based on the foregoing, the Court GRANTS TRS's Motion for Partial Judgment on the  
21 Pleadings as to Mr. Keegan's and KEES's CPA counterclaim, (Dkt. No. 22).

22 //

23 //

24

**Conclusion**

The Court GRANTS TRS's Motion for Partial Judgment on the Pleadings, (Dkt. No. 22).

The clerk is ordered to provide copies of this order to all counsel.

Dated this 15th day of August, 2016.

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

Marsha J. Pechman  
United States District Judge